IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1733 OF 2007
IN
WRIT PETITION NO. 4439 OF 2007

Sumer Corporation ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

And

Mallikarjun Gurshidappa & Ors. ... Applicants/Intervenors

Mr. S.M. Oka i/by Mr. A.A. Joshi for the Applicants

Mr. V.A. Thorat, Senior Advocate, with Mr. Vaibhav Sugdare i/by Mr. Yasmin Bhansali for the Original Petitioner

Mr. K.R. Belosey, Government Pleader, for Respondent No. 1

Mr. S.G. Surana for Respondents No. 2 and 3

Mr. K.K. Singhvi, Senior Advocate, with Ms. Shobha Ajeet Kumar for the Respondent-B.M.C.

CORAM: **J.N. PATEL AND A.A. SAYED, JJ.**

DATE: **OCTOBER 3, 2007**

P.C.:-

1. Heard the learned counsel for the parties.

2. These 28 applicants seek intervention in the petition filed by the petitioner-developer, claiming to represent 2000 slum dwellers who are squatting on Survey Nos. 6, 12 and 14 of Village Chandivali, Taluka Kurla, Mumbai, and occupying tenements in 10 chawls specified in paragraph 1 of the application. It is their case that they may be allowed to intervene in the petition as party-respondents; and in the meantime, the petitioner be restrained from proceeding with the Slum Rehabilitation Scheme under Regulation 33(10) of the Development Control Regulations for Greater Mumbai for rehabilitating the slum dwellers on the subject-land of the petition.

3. In reply, it is the case of the petitioner as well as the respondent-State that when the project was allotted to the petitioner, pursuant to the Consent Terms dated 28th February, 2003 and 23rd April, 2003 filed in Writ Petition No. 2798 of 1995 by Maharashtra General Kamgar Union by 695 slum dwellers, it was agreed that only 156 out of them were found eligible for

rehabilitation under Regulation 33(10) of the Development Control Regulations and Regulation 3.11 as per the Revised Annexure II issued by the State Government, which is evident from the affidavit-in-reply filed by Mr. Y.B. Gangurde, Deputy Collector (Encroachments and Removal), Ghatkopar, Mumbai.

4. It is the case of the petitioner that there are 400 tenements to be constructed, which would accommodate 156 slum dwellers as per Annexure II issued by the respondent-Collector, and rest of the tenements would be allotted to Project Affected Persons as per the Scheme.

5. The learned counsel for the applicants/intervenors submits that out of the 28 applicants, names of 10 persons find place in Annexure II. Therefore, insofar as these 10 persons are concerned, there cannot be any dispute over they being accommodated in the project taken up by the petitioner. As the number of persons found eligible are 156, objection / intervention raised by 10 persons in Annexure II does not, in any manner, affect

the Slum Rehabilitation Project undertaken by the petitioner.

6. It has been brought to our notice that none of the persons who were not found eligible by the Deputy Collector while preparing Annexure II, have approached the Competent Authority by preferring an appeal to the Slum Rehabilitation Authority, and that if they were aggrieved in any manner, they could have very well approached the concerned Competent Authority; otherwise they are liable to be removed from the property, which is the subject-matter of the Slum Rehabilitation Scheme, in accordance with the provisions of Sections 33 and 38 of the Maharashtra Slum Area (Improvement, Clearance & Redevelopment) Act, 1971.

7. The applicants/intervenors whose names figure in Annexure II of the year 2007 do not have any right to challenge the implementation of the project, as they form negligible minority; and insofar as others are concerned, there is no *prima facie* right vested in them to challenge the project undertaken by the petitioner.

8. We, therefore, dismiss this application, with liberty to

the applicants and the persons whom they are representing to seek alternative remedy, which is available to them under law. This need not necessarily grant them any sort of protection from being removed from the site by the authorities by following due process of law.

9. Application stands disposed of accordingly.

J.N. PATEL, J.

A.A. SAYED, J.